

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LELAND JONES,

Petitioner,

vs.

UNITED STATES OF AMERICA,,

Respondent.

2:13-cv-01489-GMN-GWF

ORDER

This habeas matter by a federal pretrial detainee held within the District comes before the Court for initial review. Petitioner seeks the dismissal of the ongoing federal prosecution against him in this Court in No. 2:12-cr-00063-PMP-CWH.

The papers presented are subject to substantial defects.

First, petitioner did not properly commence the action by either paying the \$5.00 filing fee or filing an application to proceed *in forma pauperis*.

Second, petitioner did not name a proper respondent. He may not proceed directly against the only respondent named, the United States of America, due to sovereign immunity. He instead must name his immediate physical custodian as respondent in order to properly invoke the Court's habeas jurisdiction. *E.g., Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

Due to these multiple substantial defects, the petition in this improperly-commenced action will be dismissed without prejudice. Given that petitioner is a federal pretrial detainee, it does not appear that a dismissal without prejudice would result in a promptly-filed new action being untimely or cause other substantial prejudice.

IT THEREFORE IS ORDERED that the petition shall be **DISMISSED** without prejudice.

IT FURTHER IS ORDERED that a certificate of appealability is **DENIED**, as jurists of reason would not find the dismissal of this improperly-commenced action to be either debatable or incorrect, given the absence of any substantial prejudice to petitioner from the dismissal without prejudice.

1 **The Clerk of Court shall SEND** petitioner with this order two copies each of an AO
2 242 habeas petition form (available on the J-Net) and a prisoner pauper application along with
3 one copy of the instructions for the pauper form and of the papers submitted in this action.

4 The Clerk shall enter final judgment accordingly, **DISMISSING this action without**
5 **prejudice.**

6 DATED this 21st day of August, 2013.

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11 Gloria M. Navarro
12 United States District Judge
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